

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

Claims 21-25 are pending in this application.

The outstanding Official Action includes a rejection of Claims 21-25 as being bared by applicant's Japan Patent filing, JP 2000-055964 under 35 U.S.C. § 102(d).

The outstanding rejection under 35 U.S.C. § 102(d) is traversed as the statute requires more than the mere filing of a foreign application more than one year prior to the U.S. filing date. In this regard, before the fact that the application for patent was filed more than 12 months before the filing of the application in the United States becomes pertinent, there must first be a patenting of that foreign application (here JP 2000-055964) that secures patent rights. See MPEP § 706.02(e) noting the four requirements of 35 U.S.C. § 102(d) to include the requirement that:

(C) The foreign application must have actually issued as a patent or inventor's certificate (e.g., granted by sealing of the papers in Great Britain) before the filing in the United States. It need not be published but the patent rights granted must be enforceable.

MPEP § 706.02(e) further directs attention to MPEP § 2135.01 for more details as to the four requirements of 35 U.S.C. § 102(d) and this section clarifies that publication of a Japanese application is not considered a "patenting" under 35 U.S.C. 102(d) as follows:

An application must issue into a patent before it can be applied in a 35 U.S.C. § 102(d) rejection. *Ex parte Fujishiro*, 199 USPQ 36 (Bd. App. 1977) ("Patenting," within the meaning of 35 U.S.C. § 102(d), does not occur upon laying open of a Japanese utility model application (kokai or kohyo)); *Ex parte Links*, 184 USPQ 429 (Bd. App. 1974).

Accordingly, while the relied upon Japanese application was filed more than 12 months before the filing of this application in the United States, the patenting of that

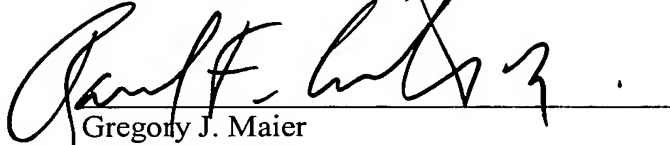
application did not occur until after the U.S. filing date¹ of this application. Accordingly, the outstanding rejection based on 35 U.S.C. §102(d) is respectfully submitted to be in error as the required foreign application "patenting" did not occur prior to the U.S. filing date.

Therefore, withdrawal of this outstanding rejection of Claims 21-25 under 35 U.S.C. § 102(d) is respectfully requested.

As it is believe that no other issues remain outstanding in this application, it is believed that this application is in condition for formal allowance and an early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

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¹ The actual U.S. filing date of this application is November 21, 2003. However, this Application is a continuation of Application Serial No. 09/789,543 that was filed on February 22, 2001. Accordingly, this Application has an effective U.S. filing date of February 22, 2001. Therefore, as the Japanese application was not published until February 25, 2000, less than one year prior to the effective filing date of the present application, there is also no bar created by this publication under 35 U.S.C. §102(b).